

Law Offices of William B. Reichhardt & Associates
4020 University Drive, Suite 222
Fairfax, VA 22030
(703) 359-6060

November 26, 2012

VIA email and U.S. mail

Washington DC (Metro) Office
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1375
Fax: 202-453-6021
Email: OCR@ed.gov

United States Department of Education Office for Civil Rights
Discrimination Complaint

1. Name of person filing this complaint: On behalf of Mrs. Maria Cruz Cueva (on behalf of her minor son, M.C.¹):

William B. Reichhardt, Esq.
Law Offices of William B. Reichhardt
& Associates
4020 University Drive, Suite 222
Fairfax, VA 22030
(703) 359-6060
wbr@wbrlaw.com

Angela A. Ciolfi, Esq.
Legal Director, JustChildren Program
Legal Aid Justice Center
1000 Preston Ave., Suite A
Charlottesville, VA 22903
(434) 977-0553
angela@justice4all.org

Alan W. H. Gourley, Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
(202) 624-2500
agourley@crowell.com

¹ Because he is a child under the age of 18, references to Mrs. Cruz's son appear in this Complaint under the alias M.C.

2. Name of person discriminated against:

- (i) M.C.
Resident of Prince William County
- (ii) All students with emotional disabilities in the PACE East Program subject to restraint and seclusion practices

3. Institution(s) that engaged in alleged the alleged discrimination:

Prince William County School Board
Edward L. Kelly Leadership Center
14715 Bristow Road
Manassas, Virginia 20112

Administration of Prince William County Public Schools
Edward L. Kelly Leadership Center
14715 Bristow Road
Manassas, Virginia 20112

Independent Hill School
PACE East Program
14780 Joplin Rd.
Manassas, VA 20112

4. Basis of complaint

Discrimination based on disability (emotional disability):

PACE East, a school within the Prince William County Public Schools system, has discriminated against former student M.C. and other past and present students in the PACE East Program solely on the basis of emotional disability. PACE East has discriminated against M.C. and other students through its haphazard and reckless use of harmful restraint and seclusion practices as a “default” behavioral intervention among students with emotional disabilities, reflecting failure to provide reasonable accommodations and resulting in denial of educational benefits.

5. Description of alleged discriminatory acts (including date(s); names of person(s) involved; why the complainant believes the discrimination was because of disability; names of any person(s) present and who witnessed the act(s) of discrimination).

Summary

The PACE East Program's ("PACE's") haphazard and reckless use of restraint and seclusion has resulted in discrimination against M.C. and other past and current students on the basis of manifestations of their emotional disabilities. This discrimination is evidenced in M.C.'s personal experience and documented in PACE behavioral intervention logs² and other records received by counsel. Specifically, M.C. and other students with emotional disabilities at PACE have been regularly subject to seclusion for substantial portions of the school day, often irrespective of the nature or severity of the behavior exhibited and despite the fact that seclusion at PACE is meant for "short-term" interventions. Further, staff members have repeatedly subjected M.C. and other emotionally disabled students to physical restraint, frequently in a prone/floor-facing position, even when they presented no apparent threat to the safety of school personnel, themselves, or other students. Together, restraint and seclusion have discriminatorily been applied as default disciplinary tools for addressing the behavior of emotionally disabled students, without regard to individual students' emotional, behavioral, and educational needs or the harms resulting from their use. As a consequence of PACE's use of seclusion and restraint, M.C. and other emotionally disabled students at PACE have received less time and opportunity for instruction, fewer education-related services, and less opportunity for social interaction with peers. In the case of some students, including M.C., these practices have further caused an escalation in behavioral problems and resulted in other physical and emotional injury.

The evidence indicates that PACE's routine use of seclusion and restraint lacks any legitimate therapeutic or other basis, denotes a failure to provide reasonable accommodations, and denies PACE's students the educational and other benefits of attending school at PACE and Prince William County Public Schools ("PWCPs"). The evidence further indicates that such failure and denial reflect the bad faith or gross misjudgment of PACE and its staff, and have occurred solely on the basis of PACE students' manifestations of emotional disability. For these reasons and those detailed further below, PACE East's restraint and seclusion practices constitute unlawful discrimination under Title II of the Americans with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), and their associated regulatory provisions.³

² See Attachment 1 (log of behavioral interventions at PACE East from September 2011 to March 2012). The behavioral log was obtained by counsel in the course of its prior representation of M.C. through a Freedom of Information Act ("FOIA") request. It provides no identifying information on individual students other than M.C.

³ See, e.g., 34 C.F.R. §§ 104.4(a), (b)(1), (b)(4). The discrimination with respect to M.C. and other students with emotional disabilities at PACE includes but is not limited to (i) denial of the benefits of attending Prince William County Public Schools, as well as provision of benefits

(continued...)

To provide some background context, we are providing below a brief overview of PACE's program for behavioral interventions. Next, you will find a detailed description of PACE's discriminatory acts with respect to M.C., followed by a description of the discrimination against other unnamed emotionally disabled students at PACE generally during a seven-month period between September 2011 and March 2012.

Overview of PACE East and its behavioral intervention program⁴

PACE East is a regional public separate day program specifically serving special education students with emotional disabilities; no non-disabled peers are included in the program. PACE East purports to incorporate Positive Behavior Intervention and Supports ("PBIS") that emphasize "teaching and reinforcing social skills and databased problem-solving to address existing behavior concerns." According to PACE, this model includes positive contact between students and adults to prevent problem behavior from occurring, the use of data to help identify students who need additional support, and consistent, predictable and fair use of consequences for all students. Significantly, traditional PBIS models do *not* incorporate restraint and seclusion practices. However, both in theory and as applied, the PACE model clearly does.

Specifically, the PACE model contemplates the use of restraint and seclusion as part of the "Re-Orientation" ("RO") process, described as a "short-term, solution focused process" that uses "therapeutic methods" to address behavioral issues. Under the PACE model, supports and interventions may be provided in a specific area of the school known as the "RO Area." According to PACE program materials, a "designated RO area is not a punishment, threat, long-term holding area, classroom, or an alternative to the classroom." The RO process can include any of a number of behavioral interventions, including crisis counseling, Handle With Care ("HWC") techniques, use of a Quiet Room, and/or time-out in the RO area.

Seclusion at PACE occurs within the Quiet Room, a room meant to provide a "safe, protected, and less stimulating setting to support the student in regaining self control." When in the Quiet Room, the student is secured alone and physically prevented from leaving the Quiet Room. According to PACE, seclusion in the Quiet Room is reserved for situations where students exhibit behaviors that present a "danger to self, others, or extreme property destruction." Based on other information, it is our understanding that the Quiet Room is a space that opens and locks from the outside. Students are placed in the Quiet Room by themselves, with no staff (though they may monitor from the outside). PACE's own "Quiet Room Procedures for Independent Hill/PACE East" denotes that placement in the Quiet Room takes place "[a]s a last

(continued...)

unequal to those of other students attending Prince William County Public Schools; and (ii) defeat or substantial impairment to the ability to accomplish educational, behavioral, and other objectives of the PACE East Program, all solely on account of the students' emotional disabilities.

⁴ See Attachment 2, Independent Hill School – PACE East Program, *available at* <http://independenthill.schools.pwcs.edu/modules/groups/homepagefiles/cms/494229/File/PDF%20Files/ShortOverview072012.pdf> (further describing PACE East Program design generally).

resort” and that a log monitoring time in the Quiet Room at one-minute intervals is required to be kept. At the conclusion of the incident, an incident report is completed, and parents are to be notified.

Restraint at PACE occurs through use of HWC techniques. Properly administered, these techniques include: “(1) student tension reduction, (2) preventative actions to decrease the need for physical interventions, (3) prompt skillful and appropriate intervention when physical restraint is necessary, in order to minimize injuries to students and staff, and (4) creating a universal perception of physical and psychological safety in the program.” While details about the specific techniques are not entirely clear, we understand that PACE employs at least several restraint techniques, including:

- Physical restraint while in a sitting position,
- Physical restraint of a student up against a wall, and
- Physical restraint forcing a student down to a position facedown (“prone” or “neutral”) against the floor.⁵

As documented below, we believe that PACE has discriminated against its students with emotional disabilities by haphazardly and recklessly implementing use of the Quiet Room and HWC restraint techniques solely on the basis of manifestations of its students’ disabilities.

Discrimination against M.C.

M.C. is a student eligible for Special Education Services due to his emotional disabilities. M.C. first began attending PACE in December 2010, while in sixth-grade. According to records provided by PWCPS, the district determined that M.C. could not be educated with his non-disabled peers and placed him in seventh grade at PACE for the Fall of 2011.

During his time at PACE, M.C. presented behavioral issues. M.C.’s January 11, 2012 Individual Education Plan (“IEP”) documented prior experience with suspension and difficulty managing anger. According to his Present Level of Performance (“PLOP”), “[M.C.] [had] shut down in the classroom setting, and [was] engaging in a lot of avoidance behaviors such as sleeping . . . and as a result [did] not complete work.” M.C. further could not “recognize the severity of his behaviors.”

Notably, despite such record of M.C.’s emotional disability and behavioral difficulties, no Functional Behavioral Assessment (“FBA”) was ever conducted. Further, there are no records indicating that PACE otherwise considered in advance what behaviors should result in the various possible interventions, including use of the Quiet Room and restraint. Neither are

⁵ See Handle with Care Website regarding physical interventions and describing the use of Primary Restraint Techniques, including “prone” or “neutral” position. See <http://handlewithcare.com/trainings/physical-intervention>.

there any records indicating that PACE ever contemplated what interventions should be used in light of M.C.'s disability and behaviors prior to implementing them.⁶

Absent any individualized guidance for addressing M.C.'s behavioral problems, PACE nonetheless responded to his behaviors – all manifestations of his emotional disability – with significant and sometimes extreme behavioral interventions, including both seclusion and restraint. On the basis of records obtained by counsel, a substantial amount of M.C.'s time in school between September 2011 and March 2012 was spent in some form of punishment or another. These punishments include:

- multiple instances of Quiet Room use (*i.e.*, seclusion) documented;
- multiple documented incidents involving use of some form of restraint; and
- at least 4 instances of restraint and seclusion in which significant police intervention was involved.

M.C.'s experience with restraint and seclusion reflects the broader pattern of recklessness and haphazardness with which PACE practices restraint and seclusion among its students with emotional disabilities generally. Time and again, M.C. was subject to significant periods of seclusion and unjustified use of restraints, including repeated use of the extreme “neutral” (prone/floor-facing) restraint position. For example, PACE's behavioral intervention log documents:⁷

- 10/10/11: M.C. “using profanity toward staff”; resulted in QR, **3 hours, 31 min.** (referred by Ms. Amy);
- 11/4/11: “Class disruption – not following staff directions”; resulted in **QR, PRT, neutral, escort**, total of 51 minutes involved (referred by Ms. CC);

⁶ As referenced previously, these failures run afoul of applicable PWCPs and School Board regulations providing for additional measures to be considered when repeated interventions are not successful. *See* Regulation 746-1, § V. In the case of M.C., none of the listed additional measures were taken until counsel intervened on M.C.'s behalf.

⁷ Many of the examples which follow are drawn from the behavioral intervention log provided by PWCPs to counsel (Attachment 1). The behavioral intervention log adopts a shorthand in referencing use of seclusion and restraint. Use of the Quiet Room is denoted by the designation “QR.” We know that “PRT” is a reference to the Primary Restraint Technique, as discussed on the HWC website. *See, supra*, n. 5. Based on our research and review, we have been able to infer that “neutral” is a reference to a form of restraint involving a prone/floor-facing position. We also understand that “wall” is a reference to restraint during which a student is pressed against a wall, and further that “settle” references another form of restraint. In some of the entries, the log also indicates the number of staff members involved in the use of restraint, as well as the number of escorts when the student is pulled from the classroom.

Due to illegibility and incompleteness of records, it is likely that our observations with respect to PACE's use of seclusion and restraint on M.C. and other students with emotional disabilities underestimate the actual extent and nature of seclusion and restraint taking place.

- 11/14/11: M.C. “tossed his lunch—disrespectful to staff—not following directions”; resulted in QR, **2 hours, 49 min.** (referred by Mr. Ralph);
- 11/15/11: M.C. “threw breakfast in trash”; resulted in **neutral, escort; 2 hours, 25 min.** in punishment (referred by Mr. Washington);
- 11/16/11: M.C. “hit another student on the bus”; resulted in pick up by parent, **neutral**, total of **3 hours, 20 min.** in punishment (referred by Ms. Williams);
- 11/22/11: “M.C. was disrupting class, blame staff, [illegible]”; resulted in mother picking him up from the QR, **3 hours** (referred by Ms. Amy);
- 2/7/12: No behavior documented other than “police pick up”; resulting punishment included 2 days out-of-school suspension, escort, **neutral** (referred by Mr. Washington);
- 2/14/12: “hands on staff/not following directions”; resulted in QR, **1 hour, 51 min.** (referred by Mr. Washington);
- 2/14/12: M.C. “making noise in class—not following directions; resulted in QR, **1 hour, 40 min.** (referred by Ms. CC);
- 2/22/12: “making a lot of noise in science—not following directions”; resulted in **settle, verbal, neutral** (referred by Ms. Amy);
- 3/6/12: M.C. “making fun of student I.H.S.”; resulted in **neutral** (referred by Mr. Spaulding); and
- 3/6/12: M.C. “defiant/insubordination/authority”; resulted in out-of-school suspension, **settle, neutral** (referred by Mr. Spaulding).⁸

Notably, we have been provided **no** records further documenting the specific circumstances underlying these events and use of restraint, despite the fact that such record-keeping is generally required whenever restraint is used.

Several patterns emerge from the above examples. First, they illustrate that PACE repeatedly chose to remove M.C. from the classroom for hours at a time through use of seclusion, even for minor behavioral manifestations (*e.g.*, being disrespectful or disruptive, throwing out food, not following directions). Such prolonged and repeated removal unnecessarily denied M.C. the benefit of valuable classroom time, and reflects at the very least gross misjudgment, if not actual animus, on account of M.C.’s manifestations of emotional disability.⁹ Second, the above examples illustrate repeated and unwarranted use of restraint, including at least 6 instances involving prone restraint, in response to behaviors and actions that, based on PACE’s own records, fail to indicate any danger to self or others.¹⁰

⁸ An Incident History and Disposition further indicates that on 11/3/11, M.C. was placed in the RO crisis area for the entire day.

⁹ PACE’s preference for simply “removing” M.C. is also reflected in its often premature resort to out-of-school suspension. Between November 2011 and May 2012, M.C. was suspended on 6 different occasions for a total of 16 days.

¹⁰ Indeed, these practices violate PWCP’s own regulations, which provide that “[p]hysical intervention, physical restraint, and/or seclusion” should only be used under circumstances

(continued...)

In addition to the behavioral log, we have obtained limited records documenting other instances where M.C. was subjected to significant use of seclusion and restraint. One of the most egregious incidents involving restraint occurred on March 29, 2012. According to the Incident Report, the incident was precipitated by relatively minor behaviors: M.C. was making noise, talking, and turning around in his seat while in the crisis area. When staff instructed M.C. to turn around and sit quietly, “[s]tudent responded by throwing a red pencil bag at staff, just missing her head. Staff then placed student in a 2 person standing PRT and escorted student to the RO quiet room. Student struggled violently with staff during the escort.”¹¹ Eventually, a police officer (B.O. Fields # 2091) was called in. In addition, Kathy Halse (Area III), Patti Pittman (Risk Management), and M.C.’s mother were called. M.C.’s mother arrived at school to find her child prone, in handcuffs, being arrested by the police. According to Mrs. Cruz, M.C. left school at the end of the day with police, and was photographed by a police officer up until the point he entered the police car.¹² In all, the heavy restraints and extreme and aggressive police contact provide additional illustration of PACE’s thoughtless use of aversive interventions on M.C., only to make a bad situation worse.¹³

One subsequent event similarly involved heavy restraint and aggressive police intervention. A May 30, 2012 incident began when M.C.’s teacher instructed him that he could not listen to music while doing work. M.C. became upset, used profanity, and “slammed his hands down on his desk.” The first response taken was to call for Reorientation. M.C. reacted by informing his teacher “that he wanted to do his Language Arts work, but he threw it on the floor.” M.C.’s behavior escalated from there on. According to notes by Kyle D. Watson, police were eventually called in, and M.C. was placed in handcuffs on the floor. Though M.C.’s

(continued...)

“which create emergency situations, and when other less intrusive alternatives are not possible or have failed.” See Regulation 746-1, § II (Apr. 27, 2011), *available at* <http://pwcs.schoolfusion.us/modules/groups/homepagefiles/cms/493839/File/Regulations/R746-1.pdf?sessionId=14f0cd425638b80034fa624dd4078af8>. In addition, the regulations require that repeated use of the same interventions on a student should trigger additional measures, such as review of the effectiveness of the interventions or a Functional Behavior Assessment. The regulations also contain reporting requirements for all events involving “time out, physical intervention, physical restraint or seclusion.” *Id.* at § IV. None of these regulations were followed in M.C.’s case.

¹¹ Though the description of the incident appears to continue, the remaining page/s were never provided.

¹² We understand that police took photographs over the course of this incident. In addition, to the best of our knowledge, PACE East is equipped with video cameras inside the school in areas where seclusion and restraint occur, but that equipment appears to be used inconsistently. With respect to M.C., we have been told that video footage of the use of restraint and seclusion either was not taken or otherwise is not available.

¹³ The Incident Report lists Mr. Spaulding, Mr. Abrusere, Ms. Bev, and Mrs. Paukowski as other persons involved in the incident.

mother arrived, she was asked to leave. Mr. Ralph applied a blindfold to M.C., and the police threatened M.C. (who had been addressing the officer with profanity) with juvenile detention. This threat just led to more threats from M.C., and a call to have police bring a car to remove M.C.. While waiting for the police car, M.C. was photographed by police. Though police claimed not to have seen any injury, M.C. insisted that the police officer “busted his lip.”

Each of the behavioral incidents described above are manifestations of M.C.’s emotional disability. PACE was specifically created to educate and serve students like M.C., yet PACE documented no efforts to determine what interventions would have been most effective for M.C. and when they were to be used. Instead, PACE repeatedly used seclusion and aggressive restraint practices of a nature and frequency suggesting arbitrariness, recklessness, and lack of concern for the potential impact of these interventions in escalating his behavioral difficulties¹⁴ and denying him classroom educational and social benefits. Rather than select appropriate interventions to address the behavioral manifestations of M.C.’s disability, PACE imposed aggressive restraint and seclusion *because of his disability*. By failing to implement interventions which reasonably accommodated M.C.’s disability, by depriving him of the benefits of the PACE East Program and attendance in the PWCPS system, and by inflicting physical and emotional harm through reckless and haphazard use of restraint and seclusion, PACE discriminated against M.C. on the basis of his emotional disability.

Discrimination at PACE East generally

Notwithstanding PACE East’s description of its behavior support program, there is substantial evidence that the school uses restraint and seclusion as a “default” disciplinary tool for a wide range of behaviors, including nonviolent ones, as a matter of course on its emotionally disabled students. As of 2009, some 160 students attended the Independent Hill School. A review of the behavioral intervention logs for September 2011 through March 2012 (Attachment 1) reveals that approximately 1400 interventions were documented. Of those interventions:

- At least 244 involved either restraint, seclusion or both;
- At least 147 involved seclusion;
- At least 115 involved use of restraint;
- At least 60 instances of the use of the “prone” restraint;
- At least 6 occasions of restraint and/or seclusion also involved police contact (three of which did not appear to involve aggressive behavior); and
- Restraint and seclusion were frequently used when no aggressive behavior was involved.

¹⁴ For example, School Psychologist, Emily Morgan, noted in a letter dated November 16, 2011 that “[s]ince the beginning of the 2011-2012 school year, the staff have observed a significant decline in [M.C.’s] behavior across all school settings.” Despite prior “outstanding attendance, behavior, and academic grades,” Ms. Morgan observed that “[M.C.’s] social-emotional functioning has regressed to a point where he is displaying behaviors never before observed in our setting . . . [and] the behaviors have occurred daily.”

A total of 115 restraint incidents were documented in a seven-month period, with 26 of these incidents occurring in October 2011. Sixty instances (52.2% of restraints) involved use of the “neutral” (or prone/floor) position. At least 25 of these uses of the neutral/prone/floor restraint involved no documented physical aggression. As many as 18 instances involved use of the “wall” position.

With respect to seclusion specifically, 147 instances of Quiet Room seclusion were documented in a seven-month period, including many instances of seclusion for extended periods of time. For example:

- 9/26/11: Student was “class disruption”; resulted in eat lunch/QR staging area for **5 hr 15 min.**
- 9/28/11: Student was disruptive in class, pinching, biting, kicking staff, attacked staff; resulted in QR/staging area for **5 hr 3 min.**
- 10/6/11: Student pulled away from staff, tried to run and hit staff; resulted in QR, calm down, and classwork for **5 hr. 8 min.**
- 10/12/11: Student using profanity, trying to move clothes; resulted in QR/task area/eat lunch for **3 hr 10 min.**
- 10/17/11: Student disrespectful in class, out of location; resulted in QR, “**sit C-8/ at least 2 days**; 1 wall, 1 settle
- 10/20/11: Student was hitting staff and kicking staff in class; resulted in QR (door open) group home pickup; **6 hr 3 min.**
- 11/16/11: Student was class disruption; resulted in QR (door open) **4 hr 21 min.**
- 11/22/11: Student was disrupting class, blame staff; resulted in mom called to pick up; QR **3 hrs**
- 11/28/11: Student was not following directions, using profanity; resulted in QR for **3 hr 39 min.**
- 12/20/11: Student refused to get off bus; resulted in QR; student “wet himself”; **4 hr 52 min.**
- 1/25/12: Profanity, disrespect to others; resulted in QR (door open) for **4 hr 6 min.**

PACE’s own records indicate an often disproportionate relationship between individual behavioral manifestations and the resulting interventions. Specifically, the behavioral log shows that seclusion and restraint (including the prone/floor variety, and interventions involving multiple staff members and significant periods of time) are frequently applied in situations involving no documented threat to safety. For example, in addition to the entries noted above, the log also contain the following entries:

- 9/6/11: Not follow directions, walked out of cafeteria w/o permission; resulted in **2 man PRT, escort x2.**
- 9/8/11: Threw spoon at another student during lunch; resulted in **2 man PRT, escort x1.**
- 10/21/11: Walked out of classroom without permission; resulted in **1 escort, 1 settle, 1 neutral.**

- 11/3/11: Disruptive in class, not following directions; resulted in **QR** (door open)-RO staging area; **1 hr 23 min; escort x2, floor.**
- 11/15/11: Threw breakfast in trash; kick trashcan; resulted in staging area **2 hrs 25 min; 1 neutral, escort.**
- 2/15/12: Crawling on floor screaming about [illegible]; resulted in **3 man [PRT], escort.**
- 2/22/12: Making a lot of noise in science, not following directions; resulted in **settle, verbal, neutral.**
- 3/14/12: Called teacher a b-tch; resulted in **QR** and **neutral; 1 hr, 55 min.**

In addition, police contacts appear to have been initiated in situations that probably do not demand them, including the following separate instances where the student did not display any documented aggression:.

- 9/14/11: Student “fell to the floor not following directions, using profanity disruptive”; social service/police were called in.
- 9/21/11: Student was “out of location” laying on the lawn outside the classroom; both the student’s mom and police were contacted.
- 3/9/12: Student was upset based on exclusion from martial arts and ripped his sweat-shorts. The police took the student home.

While we do not have access to any current demographic data specifically for PACE East, we believe that the majority of students in the program are students of color.¹⁵ Accordingly, we suspect that PACE’s reckless and haphazard application of restraint and seclusion, in violation of PACE’s own policies, may involve racial discrimination in addition to disability discrimination.

In sum, PACE East’s default use of restraint and seclusion has occurred and presumably continues despite its specialization in the area of special education, and in emotional disabilities in particular. Given the repeated, routine use of restraint and seclusion in situations that do not warrant them—as a default tool rather than last resort—PACE can have no legitimate non-discriminatory reason to justify their use. At the very least, PACE’s regular, indiscriminate use

¹⁵ A “Summary of Selected Facts” collected by OCR, based on 2009 data, indicates a demographic breakdown as follows:

- Total enrollment: 160
- American Indian/Alaska Native: 0.0%
- Asian/Pacific islander: 3.1%
- Black: 46.9%
- Hispanic: 9.4%
- White: 40.6%

Notably, the data contains a section for documenting use of restraint; however, no use of restraint at Independent Hill is documented whatsoever. *See* <http://ocrdata.ed.gov/Page?t=s&eid=276547&syk=5&pid=1>.

of restraint and seclusion in addressing behavioral manifestations of students with emotional disabilities reflects gross misjudgment, if not bad faith and deliberate indifference to the students' welfare and needs. PACE also acted with deliberate indifference, bad faith, and/or gross misjudgment in its use of seclusion and restraint on M.C., as is clear from the fact that PACE made no significant effort to determine what interventions were appropriate and under what circumstances they might be implemented. Instead, PACE haphazardly and recklessly implemented both seclusion and restraint, often escalating M.C.'s (and likely others') behavior and initiating unnecessary and, at times, aggressive and extreme police involvement. These actions constitute discrimination on account of failure to provide disabled students with reasonable accommodations and the denial of educational and other benefits, all on the basis of students' manifestations of emotional disability.¹⁶

6. Most recent date of discrimination

M.C.: May 30, 2012

Other students at PACE East with emotional disabilities: It is our understanding that discriminatory use of seclusion and restraint at PACE East on students with emotional disabilities is ongoing.

7. Waiver of filing deadline?

N/A

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No.

Explanation: M.C., through counsel, reached a settlement with Prince William County Public Schools involving allegations that M.C. was denied a FAPE under the Individuals with Disabilities Education Act ("IDEA"). This resulted in a new placement for M.C. outside of PACE East. While restraint and seclusion were discussed, the allegations of discrimination on the basis of disability through haphazard and reckless use of restraint and seclusion were not specifically addressed in any other prior procedures, appeals, or due process hearings. In addition, we believe that any attempted mediation would be futile, given the systemic and pervasive nature of the problem.

¹⁶ M.C. no longer attends school at PACE East and, therefore, is no longer subject to restraint and seclusion there. However, M.C. maintains his concern about the ongoing use of restraint and seclusion at PACE with respect to other students with emotional disabilities, and has continued to suffer emotional and psychological effects since leaving PACE. It is foreseeable that M.C. will eventually return to the Prince William County Public School district upon his successful completion of a therapeutic residential school placement.

9. **If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates.**

N/A

10. **In case OCR cannot reach you at your home or work, name and telephone number of another person (relative or friend) who knows where and when OCR can reach you.**

See counsel representation listed at Item 1.

11. Remedy

Foremost, we request that OCR thoroughly investigate use of restraint and seclusion at PACE East. Through such investigation, we anticipate that OCR would likely determine that PACE East and/or PWCPs discriminated against M.C. and others on the basis of their emotional disabilities. We would hope that any resolution, formal finding, or order would include the following forms of relief, among any others OCR may deem appropriate:

1. A finding that PACE East violated Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act through its haphazard and reckless use of restraint and seclusion practices on M.C. Specifically, we request a finding that PACE East discriminated against M.C. by:
 - a. Using restraint and seclusion on M.C. because of his emotional disability;
 - b. Denying M.C. reasonable accommodations in light of his emotional disability and its behavioral manifestations;
 - c. Denying M.C. the benefits of attending PACE East and PWCPs, solely on the basis of his emotional disability; and
 - d. Defeating or substantially impairing M.C.'s ability to accomplish educational, behavioral, and other objectives of the PACE East Program, all solely on account of his emotional disabilities.
2. A finding that PACE East violated Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act through its haphazard and reckless use of restraint and seclusion practices on its students with emotional disabilities. Specifically, we request a finding that PACE East has and discriminated against its students by:
 - a. Using restraint and seclusion on its students because of their emotional disabilities;
 - b. Denying its students reasonable accommodations in light of their emotional disabilities and their behavioral manifestations;
 - c. Denying its students the benefits of attending PACE East and PWCPs, solely on the basis of their emotional disabilities; and
 - d. Defeating or substantially impairing the ability to accomplish educational, behavioral, and other objectives of the PACE East Program with respect to PACE

students with emotional disabilities, all solely on account of students' emotional disabilities.

3. A demand that PACE East immediately cease its reckless and haphazard use of seclusion and restraint on students with emotional disabilities.
4. Appointment of a special master for purposes of developing a plan to overhaul the current system of behavioral interventions (including haphazard and reckless use of restraint and seclusion) and overseeing the implementation of more positive techniques.
5. A demand that PACE East staff receive both oversight and extensive training in properly administered PBIS interventions and other de-escalation techniques.
6. A demand that PACE East and/or PWCPS provide for private psychological/psychiatric counseling to M.C. and other former and current students at PACE East who have been subject to discriminatory use of seclusion and restraint, as needed.
7. A requirement that PWCPS provide notice of this investigation to all parents of PACE East students and inviting them to contact OCR if they have relevant information.

12. Signature

On behalf of Ms. Maria Cruz Cueva,



William B. Reichhardt, Esq.

November 26, 2012

CONSENT FORM- FOR USE OF PERSONAL INFORMATION

Complainant's Name (print or type): MARIA CUEVA CRUZ BY COUNSEL
Institution Against Which Complaint is Filed: PRINCE WILLIAM COUNTY SCHOOL BOARD ET AL
WILLIAM B. REICHARD

Please sign and date section A, section B or section C and return to the address below:

I have read the section, "Investigatory Uses of Personal Information" in the OCR document "Information about OCR's Complaint Processing Procedures," which explains OCR's use of personal information. I understand that the Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information submitted to all Federal agencies and their individual components, including OCR. I will cooperate with OCR's investigation and complaint resolution activities undertaken on my behalf. I understand that my failure to cooperate with OCR's investigation may result in the closure of my complaint.

- A. I give OCR my consent to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed) to the institution alleged to have discriminated, as well as other persons and entities, if OCR, in the course of its investigation or for enforcement activities, finds it necessary to do so.

Maria Cruz
Signature 11/26/12
Date
OR William B. Reichard, Esq.

- B. I do not give OCR my consent to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed). I understand that OCR may have to close this complaint if OCR is unable to proceed with an investigation without releasing my identity (and/or that of my minor child/ward on whose behalf the complaint is filed).

Signature

Date

- C. Alternatively, if you are not filing this complaint on your own behalf or on behalf of your own minor child/ward, you are responsible for obtaining written consent from the person on whose behalf the complaint is filed or, if he or she is a minor, that person's parent/guardian.

I have read this document, and I agree with the person who filed this complaint. I wish you to proceed with OCR's investigation and resolution process. I give my consent for OCR to reveal my identity (and/or that of my minor child/ward on whose behalf the complaint is filed) to other persons to the extent necessary for the purpose of resolution or investigation of this complaint.

Name (print or type): _____

Signature

Date